

OGC HAS  
REVIEWED.

28 October 1954

MEMORANDUM FOR: Deputy Chief, Foreign Intelligence

SUBJECT : Rights of Pro-Western Local and National Governments  
vis-a-vis the Privileges of Iron-Curtain Diplomatic  
Personnel

REFERENCE : Your memorandum, dated 28 April 1954, Subject:  
"Request for Study of Diplomatic Immunity."

1. In your memorandum, you enumerated various practices indulged by Iron-Curtain diplomatic personnel as regards the forcible removal of apparent defectors from pro-western countries and the closely guarded movement of such defectors through such countries. You pointed out that, such were the circumstances of such removals or movements, as to make the apprehension of the defectors by persons in sympathy with the aims of the United States impossible and even the approaching the defectors difficult. Against this background, you requested that this office make a survey of the laws of all non-iron-curtain countries with specific emphasis on:

- a. "The right of local police forces to detain diplomatic personnel in order to establish the identities, accreditations and personal wishes about travel of such personnel;
- b. "The right of local police forces to intervene with the use of reasonably necessary force to question "captive" personnel and to prevent the commission of a crime of violence or of kidnapping by diplomatic personnel;
- c. "The right of diplomatic personnel to isolate and guard other personnel under escort against their will, including keeping away the local security service;
- d. "The right of a foreign government to move closed vehicles through the territory of a sovereign state and refuse to allow the local police to have access to the occupants to the vehicle to identify and question them."

2. The subject matter of these queries is somewhat broad. The research necessary to produce detailed answers to them will require extended attention to many sources not readily available to this office. Consequently, we offer the following general commentary.

3. As regards the first question, local police forces generally are empowered to detain diplomatic personnel for a reasonable length of time for the purpose of establishing their identities, their accreditations and travel plans. In most foreign countries, police concern with matters of this general nature is much more a part of the order of things than in the United States. Resultingly, if properly handled, detentions for these purposes often could last a day or so.

4. As regards your second question, it is generally true that police have the right to undertake the prevention of crime where either a crime actually is being committed, or they have reasonable grounds for believing that a crime is about to be committed. Ancillary to this power is the one to use whatever force is necessary. Diplomatic immunity does not extend to the attempted prevention of crimes by the local police forces. It extends to the punishment for the commission of such crimes.

5. As regards your third question, it is doubtful that diplomatic personnel have a "right" to keep another person in a state of involuntary captivity. However, whether or not there exists such a right is relatively unimportant. The issue is whether or not local police wish to intervene. Generally speaking, they have the authority as the involuntary detention, or the involuntary transportation, of one person by another constitutes what is known in the American law as kidnapping.

6. As regards your fourth question, it is again doubtful whether diplomatic personnel or foreign governments have any "right" to move sealed vehicles through the territory of a foreign sovereign state, refusing to allow the inspection of such vehicles by local security forces. As we have pointed out, the police have the power to inspect such vehicles, whether for the ostensible reason of establishing accreditation or identity or the real reason of attempting to delay or impede the action.

7. In relation to the above, we offer the following by way of caveat. Our thoughts largely reflect certain general principles of Anglo-Saxon law and international amity. They do not reflect specific research of the laws of any given country or countries. These may be different, either in their specific provisions or, and more importantly, in their interpretation and application by the authorities concerned. In situations such as the ones which are described, the relative "rights" of the parties are of little practical avail. Essentially a decision whether to undertake kidnapping or to attempt to prevent it being undertaken is a function, not so much of the prevailing law but of the dictates of national interests. Thus, in a given country, the government might be communist-orientated, although independent. While it may have laws against forcible entry, search-and-seizure, etc.; violations of these laws by Soviet diplomatic personnel may be winked at. Finally, law enforcement is the prerogative of the nation in which an action contrary to the law may be undertaken by foreign diplomatic personnel. Its enforcement entirely is within the hands of that government and will be undertaken or not undertaken as that government sees fit.

8. The above constitutes our general thoughts on the over-all problem proposed by your memorandum. We trust that these will be of some assistance.

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Office of General Counsel

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